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No. 287

IN THE

Supreme Court of the United States

OCTOBER TERM, 1940

EARL RUSSELL BROWDER

Petitioner

against

UNITED STATES OF AMERICA

REPLY BRIEF FOR PETITIONER

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Petitioner's contention is that no crime was committed because the use was neither (a) a use to pass the boundaries in foreign countries or (b) a deceptive or evil use.

It is incumbent upon the government to show that Browder's employment of the passport for identification was both a passport use within the contemplation of Title IX and a willful use. If it fails in either respect the government's case falls.

I.

The Government's contention that the use of a passport for the correct identification of a returning American is a use within the statute.

The contention of the defense is that such a use was not within the contemplation of the legislature at the time the statute was passed (Petitioner's brief, pp. 7-9), and that at no time since has anything happened to bring it within the purview of the statute.

(1) The government challenges (Government's brief, p. 23) petitioner's description of the passport concept held by Congress at the time of the passage of Title IX (Petitioner's brief, p. 14). The court below, however, was in accord with petitioner (R. 402).

A re-examination of the statutes and administrative regulations in the light of this challenge makes plain the inadequacy of the Government's authorities to support its skepticism.

At the time the act was passed there were two classes of statutes: (1) foreign relations statutes, (2) immigration statutes. The immigration laws cover the question of entry into this country. Title IX on the contrary was addressed by Congress to the subject of foreign relations. Its language, context, legislative and public history make this plain (Petitioner's brief, pp. 6-9). The Immigration Service was not even consulted as to this matter (*id.*, p. 14)[1].

(2) President Wilson declared in 1917 at the time the act was passed, "Passports issued by the Department of State or its diplomatic or consular representatives are intended for identification and protection in foreign countries and not to facilitate entry into the United States." He stated the reason: "Immigration being under the supervision of the Department of Labor" (see Petitioner's brief, p. 15, and footnote, and Appendix, p. 2; also Government's brief, p. 26).

The rule is in harmony with the authorities. The government erroneously seeks to confine the rule to Chinese-Americans (Brief, p. 25). There is no such limitation.

(a) The government admits that there is no reference to Chinese-Americans in the rules published in 1916 and 1917, but it says that this must have dropped out "inexplicably" (Government's brief, p. 25). The reason that the government can find no explanation is that there is no

[1]When, after the passage of Title IX, there was a war time administrative restriction placed on entry into the United States it was by the joint order of the State and Labor Department (Joint Order of July 26, 1917).

explanation that will support the government's position. The statement of President Wilson is unqualified. It is in line with the contemporary and earlier authorities.

(b) Secretary Bryan in 1915 used the same language in referring to persons who had declared their intention to become citizens (Appendix to Petitioner's brief, p. 5). "A passport may be granted to a declarant under the statutory provision quoted above[2] for purposes of identification, and protection in foreign countries, other than his country of origin, but not for the purpose of facilitating reentry into this country."

(c) Secretary Knox made the same statement in connection with naturalized citizens concerning whom questions as to expatriation had arisen. He said, "a passport should not be issued merely to facilitate entry into the United States" (Circular instructions by Secretary of State to the American Diplomatic and Consular Officers, November 18, 1911).

(3) Although the rule was not limited to Chinese-Americans, the instance of the Chinese-Americans merely emphasizes the rule. For as to them it was permissible though not required for Chinese-Americans leaving the country to get return certificates from the *Labor Department* (Chinese Rules of October 1, 1926, Rule 16, Subdivision 11). The State Department would not issue passports to them unless as a prerequisite to departure they had obtained such certificates from the Labor Department (Passport Rule 4, Rules of June 7, 1911).

(4) The Government's brief (pp. 11, 29n) suggests that Congress, at the time of enactment of Title IX, was not unaware of problems arisen in connection with entry. Its Appendix prints material concerning events subsequent to the recommendation and introduction in Congress of Title IX, but prior to enactment.

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[2]The statute was the Act of March 2, 1907 (Appendix to Petitioner's brief, p. 1).

The suggestion is without basis. The material was not made public[3]. The Government does not show that the matter was brought to the attention of Congress[4].

(a) Title IX was passed on June 15, 1917. It was proposed to Congress in June 1916. The bill that was finally passed was, with slight exceptions, not in any sense material (see Appendix to Petitioner's brief, pp. 6-8), in precisely the form that it was submitted by the Attorney General in 1916.

(b) Since in the entire debate there is no indication that the question of returning Americans was considered by Congress or that the Attorney General, if he had this problem in mind stated it to Congress, it cannot be assumed that this use was in the mind of Congress and/or that it entered into the passport concepts that were at the base of Title IX[5].

(c) It was only at the end of 1917 when the Attorney General made his annual report, *six months* after Title IX was passed, that he recommended the passage of a law regulating the "entry and departure of all persons, both citizens and aliens, to and from the United States and its

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[3]No mention of it is made in the Congressional Record, departmental reports, Official Bulletin of the U. S. Committee on Public Information, or in the *N. Y. Times* Index.

[4]The material is addressed to two situations: 1) a particular situation concerning emergency passports issued by our Berlin embassy after our rupture of relations with Germany; 2) the visaing by our representatives abroad of foreign (more particularly Scandinavian—see *N. Y. Times*, July 27, 1917, p. 1, cols. 6-7), *not American*, passports. With respect to *American* passports, it is noted that "furthermore, it is possible" that false American passports "may" be used (Government's appendix, p. 53).

[5]It is desirable here to clear up an inadvertence in the argument of the counsel for the government. He read from the recommendations of the Attorney General (Appendix, p. 10) "many acts committed in the United States * * * are not now punishable by any Federal Criminal Law", but it must be recalled that the Attorney General's recommendations were dealing with seventeen titles other than the passport title. They referred to such acts as sabotage in American factories, etc., and with respect to passports, to such matters as obtaining a passport in America or forging one here.

possessions". And then his recommendation was limited to the period "during a state of war" (Appendix to petitioner's brief, p. 16).

(5) The government's contention that in any event what happened after the passage of the act indicates that the use of a passport by returning Americans became a sanctioned use (Government's brief, p. 27).

(a) To sustain the proposition that the first world war period worked a change in the passport concept, the government is compelled to rely heavily upon the excerpt from the State Department Notice to Bearers of Passports, Series 1929 to date.

In the excerpt, the citizen is advised to carry a passport even when not required in a foreign country. The reason given is that it will save the inconvenience of applying for one abroad "should the holder desire to travel in countries where passports are required". The excerpt then adds "It will also enable the holder to establish his American citizenship upon his return to the United States and thus facilitate his entry." It concludes by saying that the citizens who leave without passports "should carry with them proof of their citizenship, such as birth, baptism or naturalization certificates".[6]

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[6]The excerpt in full reads: "17. Advisable to carry passports even when not required in a foreign country.—An American citizen leaving the United States for a country where passports are not required is nevertheless advised to carry a passport, except in travel to Canada or Mexico, or on round-trip cruises mentioned in the last sentence of the preceding paragraph. The obtention of a passport prior to departing from the United States may later save the time and inconvenience of applying for one abroad should the holder desire to travel in countries where passports are required. It will also enable the holder to establish his American citizenship upon his return to the United States and thus facilitate his entry. American citizens who leave the United States without passports should carry with them proof of their citizenship, such as birth, baptism, or naturalization certificates."

The provision in effect 1921-1925 (Petitioner's brief, p. 17, footnote 27), advises each native American leaving without a passport to have in his possession "a birth or baptismal certificate or a sworn statement from a reputable American citizen certifying to the place and date of his birth * * *" and states that "This evidence is often necessary to obtain return (passage to the United States) and is useful to ensure speedy reentry into the United States."

Certainly this advice cannot be said fundamentally to have enlarged or changed the passport concept.

(b) The 1918 happenings negate the idea that the passport concept was extended as the government implies. The act of 1918 regulated entry to the United States by requiring passports and visas from aliens, and passports from citizens. It attached heavy penalties for violations (See Appendix to petitioner's brief, p. 34).

The act was never anything but a war measure. It was recommended by the Attorney General as a war measure (*Idem,* p. 16) and it was entitled "An Act to prevent *in time of war* departure from or entry into the United States contrary to the public safety" (*Idem,* p. 32).

The deliberate refusal of Congress to extend the passport concept is shown by the fact that though the act was continued as to aliens, Congress refused over the protests of the administrative departments, to extend it as to citizens[7] (*Idem,* pp. 39, 40, 41; petitioner's brief, p. 18n).

(c) Later evidence that the concept of a passport as a foreign travel document has never changed is supplied by the following:

(i) 1920 hearings on fees charged for passports and for visaing foreign passports (Mr. Carr—director of consular service: "The passport serves as a means of identification abroad").[8]

(ii) 1926 hearings on validity of passports (Mr. Carr—Assistant Secretary of State: A passport "is a certificate of citizenship for international purposes").[9]

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[7]Even as to aliens the penal provisions were not extended,—merely the regulatory provisions (*Flora* v. *Rustad,* 8 F. [2d] 335, C. C. A. 8).

[8]Comm. on For. Aff., 66:2 House, Hearings on H. R. 12211 (Feb. 3, 4, 7, 1920), at p. 9.

[9]Comm. on For. Aff., 69:1 House, Hearing on H. R. 11947 (May 12, 1926), at p. 7. See also Comm. on For. Aff., 71:2 House, Hearings on H. R. 10826 (April 15, 16, 1930).

(iii) Presidential passport rules 124, 125, of March 31, 1938 (our Appendix, p. 21).

(iv) State Department press release and passport regulations of September 4, 1939 (directed to passport "use": "use in traveling from the United States to any country in Europe" and "use in Europe").[10]

The only reference to the passports of returning Americans is that they will be collected by the *State* Department "for safe keeping" and to assure that they will not again be used except in accordance with the new regulations.

(d) The suggestion (Government's brief, pp. 10, 23) that the Immigration Act of 1917 enlarged the concept of the passport use does not bear analysis—not only is this true when the act is read against the background of the facts above stated, but it appears from the provisions of the act itself.

That Act was by no means a restriction act but simply excluded obviously undesirable aliens. Under it and under all prior immigration acts, deportation was the sole weapon employed against illegally-entered aliens—with a single exception.[11] This the Government acknowledges[12] in its citation of *Flora* v. *Rystad,* 8 F. (2d) 335 (C. C. A. 8).

To borrow the language of the Court in *Flora* v. *Rustad,* 8 F. (2d) 335, at p. 337, "a reversal of" the policy that passports involve foreign relations and hence are within the jurisdiction of the State Department and that entry into the United States is a matter for the immigration law—with a consequent change in the passport concept—"ought to be based on a clear legislative declaration, and

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[10]These are printed *infra,* pp. 15-18.

[11]This related to the return of an alien previously deported on account of prostitution (section 4 of 1917 Act; Act of March 26, 1910, section 3).

[12]Government's brief, p. 33.

not a judicial construction of statutes which leave the subject in such uncertainty and doubt as do the statutes here under consideration."

(6) The government contends that despite the fact that Congress *deliberately* declined to require passports of returning Americans, nevertheless the concept of the passport use was so enlarged by the advice to passport bearers that the use to enter the country became a customary use and hence a use that now comes within the penal provisions even though it may not have been included originally (Government's brief, pp. 26-7).

(a) Whether it has become a customary use is not the question. The question is whether it is the kind of use the Congress intended to make criminal (Petitioner's brief, pp. 20-21).

Title IX is concerned with matters relating to foreign relations under the jurisdiction of the State Department, and not to immigration matters within the jurisdiction of the Labor Department. (Compare *United States* v. *Adielizzio*, 77 F. (2d) 841, 843, Petitioner's brief, p. 19, footnote 32).

(7) The government concedes that not all uses of a passport are within the condemnation of the Statute (Government's brief, p. 17). It thus avoids some of the arguments in petitioner's brief, page 17. But it then proceeds to lay down as a test that the use may be restricted to travel uses—provided that it includes the return to America of one of its citizens (Government's brief, p. 16).

There is no authority for this except the Government's brief. The contention seems to be based largely on the idea that even though a passport so far as proving American birth is concerned is on no higher plane than non-passport documents—the acquisition of it for that purpose is within the ordinary incentives that would make one embark on a fraudulent adventure.

We suggest that it is unlikely that anyone would take the grave risks involved in order to obtain a passport as proof of citizenship when other data not involving such risk are readily available.

We submit that the distinction between the prohibited uses and those not made criminal is the distinction, so far as American citizens are concerned, between the use for foreign travel and that for identification in this country.

(8) The government argues that there is no difference between identification abroad and in this country. But this overlooks that passports when used abroad serve a different purpose than birth certificates or any other document. A reference to the instructions to bearers of passports shows that many foreign countries have for years required passports as a condition to enter. A birth certificate will not serve for this purpose. We do not believe that the Government will suggest that a birth certificate would ordinarily be visaed by a foreign embassy or consulate (see also Petitioner's brief, pp. 17-18).

The use of expired passports seemed to present an illustration of the distinction (Petitioner's brief, p. 16).

An expired passport has no validity as a passport to enable one to cross boundaries. Its use as identification is clearly permissible.

(9) The government questions whether there is any authority for this conclusion (Government's brief, p. 20). But the Government ignores the reference to Moore's Digest of International Law (Petitioner's brief, p. 16). It also ignores the regulations of May 8, 1939 (¶ 4, p. 2). It does not consider the Notice to Bearers of Passports which suggests that citizens who leave without passports should carry with them "proof of their citizenship, such as birth, baptism or naturalization certificates" (*supra*, p. 5). This language is certainly broad enough to include expired passports.

(10) The Government refers to possible gaps in the enforcement of the criminal law if petitioner's views are accepted.

(a) Many of the arguments are disposed of by distinctions drawn between citizens and aliens. Many of the gaps, if there are gaps, have been closed by other or subsequent legislation.[13]

(b) That there may be possible gaps in enforcement is no reason for distorting or reversing, other than by legislative action, deliberate governmental policy. *United States* v. *Weitzel*, 246 U. S. 533, pp. 542-3; *Flora* v. *Rustad*, *supra*; *United States* v. *Katz*, 271 U. S. 354. Especially is this true in criminal cases (Petitioner's brief, p. 19 and cases there cited).

II.

The Government's contention that a person who uses a passport for a non-deceptive purpose or for a purpose not evil in itself is willfully using the passport.

(1) Petitioner has pointed out that there are two kinds of misrepresentations in applications (a) those that result in the issuance of passports that certify to a lie; (b) those that result in truthful passports. It was suggested that Congress make punishable the fraudulent obtaining in both instances, but the fraudulent use only where the passport was deceptive (Petitioner's brief, p. 10).

[13] 18 U. S. C. § 80 (making fraudulent statements); 18 U. S. C. § 88 (conspiracy to defraud); 8 U. S. C. § 220 (forging visas or falsely impersonating another person, etc. held to make criminal the fraudulent use by an alien of an American passport. *United States* v. *Monyas*, 42 F. [2d] 743). The foregoing acts apply to aliens and citizens alike.

An alien is likewise punishable under 8 U. S. C. § 180a for acts involved in a fraudulent entry; and under 18 U. S. C. § 141 for false swearing in naturalization cases.

Petitioner questioned whether Congress intended to visit drastic punishment on a person using a paper to make a truthful representation where substitutes would have done just as well and where it was hardly conceivable that he would have failed to use the simple alternatives that were at hand if he knew that drastic consequences would follow such a use (Petitioner's brief, p. 6).

(2) If we assume that a non-deceptive use is punishable, it must be a willful and knowing use. Counsel for the government at the argument indicated that willful meant in effect no more than intentional or conscious use (Government's brief, p. 36). But the same counsel in his brief in the *Warszower* case in the Circuit Court of Appeals argued that the term imported that the use prohibited by Section 2 of Title IX was one "with bad faith and evil intent" (See full quotation, Petitioner's brief, p. 13).

We submit that counsel was correct in the *Warszower* case and incorrect in his argument in this Court. Willfully means something more than knowingly (Petitioner's brief, p. 11n), and the history of the statute reenforces this conclusion (*id.*, pp. 7-8, 11). This is the ordinary case of a statute drawn to punish offenses involving moral turpitude. It is not a case in which the act is strictly defined and punished regardless of intent as are some of the cases cited in Government's brief, pages 31-2, n11.

The Government seems to argue (Brief, pp. 35-41) that willfully in the ordinary criminal case involving turpitude does not mean "with evil purpose or criminal intent".

The argument has been so recently rejected in both *United States* v. *Murdock*, 290 U. S. 389 and in *United States* v. *Illinois Central Railroad Co.*, 303 U. S. 239, that extended discussion is unnecessary. The government seems to imply that the *Illinois Central* case indicates a whittling down of the general principle (Brief, p. 38). That case definitely decided that willfully meant something more than knowingly (p. 242). It dealt not with a criminal offense

but with a civil penalty and it held that willfulness was sufficiently shown when a railroad in violation of an express requirement that cattle should not be confined for more than 36 hours, negligently failed to see that this requirement was lived up to.

The government argued in that case (Brief, p. 14) that it was not a criminal case but one for a civil penalty; that "the desire to give relief was more dominant than to inflict punishment."

(3) The government contends that the prior conduct of the petitioner precludes good faith. There is no possible justification for this argument either in law or in fact.

(a) Petitioner in 1934 abandoned the practice of applying for passports in other names and applied in his own name. This was a definite break with the past practices.

(b) The representation "None" may have meant to the petitioner that there were no passports issued to him in his name,—certainly not valid passports (Compare *U. S. ex rel. Lamp* v. *Corsi*, 61 F. [2d] 964, 965 (C. C. A. 2), holding that a visa obtained by a false representation was not a valid visa).

(c) Regardless of the meaning of the representation "None" contained in the application for the 1934 passport, the passport that was used was a renewal passport. Neither the renewal passport nor the application for it contained any misrepresentation (Petitioner's brief, p. 23). Since it was the renewal passport that was used, petitioner may have assumed that the representation "None" had nothing to do with the passport that he then possessed.[14]

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[14]The fact that the passport was a renewal passport and the contention that it contained no misrepresentation was made a ground for dismissal of the indictment, refusal of which was excepted to (Petitioner's brief, p. 24) and was raised by the 19th and 20th assignments of error (R. 386). It was not specifically referred to as a ground for certiorari.

The distinction between a renewal passport and a new passport is shown, in petitioner's brief, pages 23-4, to have been the difference between the surrender of the last passport for cancellation and the presentation of the last passport for stamping.

(d) Assuming that petitioner believed even that the taint of "None" survived the renewal, but that he knew that he did not need a passport to enter the country,—a fact that was stated in the instructions to passport bearers given to him when he received his passport—it seems inconceivable that his act in using the passport at the pier could have been willful. Why should he take this risk when other means of identification were so readily available? (Petitioner's brief, pp. 24-25).

III.

The Government's argument that the question of willfulness was not properly raised (Government's brief, pp. 34-35).

(a) The question that there was no indictable use and that there was no evidence to submit to the jury was raised over and over again (R. 226, 227, 228, 235, 236, 283, 284, 286. Assignments of Error 3rd, 16th, 18th, 30th, 31st; R. 382-390).

(b) It is only if this court holds that the use was an indictable use and that there was evidence to go to the jury—that a question would be presented whether petitioner can now challenge the charge of the judge, clearly erroneous on the subject of willfulness (Petitioner's brief, p. 29).

The government seems to imply that the failure of the defendant to testify affects the situation (Government's brief, p. 39). Petitioner's brief refers (p. 29) to *United States* v. *Murdock*, 290 U. S. 389, and (p. 25, footnote 38) to *People* v. *Clark*, 242 N. Y. 313. In each of these cases there was a violation of the express provisions of the statute: in the *Murdock* case the defendant refused to furnish information; in the *Clark* case a public officer received an emolument in excess of what was authorized

by law. In each case the defendant failed to take the stand. In each case the court reversed because of the error in excluding from the jury the issue of evil intent. In this case unlike the *Murdock* and *Clark* cases there was no violation of a precise statute. The act prohibited was a use—a general term. The government concedes only certain uses are indictable. And it has supplied its own interpretation of where the prohibited uses begin and end (see *supra*, p. 8).

Now although there was no exception to the charge, the viewpoint of the defense quite at variance with the charge had been presented by the various motions and requests (Petitioner's brief, p. 28, and see also R. 227).

There are, to say the least, grave doubts in any view of the case (*supra*, pp. 10-13) whether petitioner's conduct was willful. He was entitled to instruction that willful meant something more than a conscious use.

The court's failure was error so fundamental, the charge being in effect a direction to convict (Petitioner's brief, p. 28), that we submit that justice requires that the judgment be reversed.

Respectfully submitted,

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Press Release, and Departmental Passport Regulation Promulgated After Outbreak of European War of 1939.

In view of the exigencies of the present situation in Europe, particularly the danger of travel to and from Europe, the hazards which may be encountered in residing in belligerent countries, and the shortage of steamship facilities to transport the many thousands of American citizens now in Europe who have been urged to return to the United States, the Secretary of State has deemed it advisable to prescribe regulations under which no passport which has heretofore been issued shall be valid for use in traveling from the United States to any country in Europe unless it is submitted to the Department for validation for such use. Under the new regulations, before the Department of State will validate any passport heretofore issued or issue any new passports for use in Europe, it will be required that documentary evidence be submitted to it showing the imperative necessity for traveling to Europe. It is contemplated by the new regulations to restrict the use of passports only to those who can show an imperative necessity for traveling in Europe and at the same time to take every possible precaution to assure the importance of American passports as definitely identifying and establishing the citizenship of the person to whom they are issued. Extraordinary care will thus be taken in this regard and consequently persons desiring to have passports already issued to them validated for future use in Europe and persons desiring to obtain new passports for use therein are urged to submit their applications at least three weeks in advance of their expected sailing.

In order to assure strict compliance with the new regulations, passports of American citizens intending to depart for Europe will be carefully examined to see that they have been validated for use in Europe. Upon the return of American citizens their passports will be taken up and returned to the Department of State for safe keeping and to assure that they will not again be used except in accordance with the new regulations.

The Passport Agencies in New York, Boston, Chicago and San Francisco are being advised of the new regulations and for the convenience of the officers in the various foreign consulates situated in the cities mentioned they are being instructed to furnish each such officer with a copy of the new regulations requiring the validation by the Department of passports heretofore issued in order that they may hereafter be used in traveling to Europe. The new regulations are as follows:

DEPARTMENTAL ORDER

No. 811

By virtue of and pursuant to the authority vested in me by Section I of the Act of July 3, 1926, 44 Stat. 887 (U. S. C., Title 22, Section 211a), and by Executive Order No. 7856 of March 31, 1938, prescribing rules governing the granting and issuing of passports in the United States, I, the undersigned, Secretary of State of the United States, hereby prescribe the following regulations:

No passport heretofore issued shall be valid for use in traveling from the United States to any country in Europe unless it is submitted to the Department of State for validation.

Before the Department of State will validate any passport heretofore issued for use in any country in Europe, it will be necessary for the person to whom the passport was issued to submit documentary evidence concerning the imperativeness of his proposed travel. A person who desires travel in Europe for commercial purposes must support his application for the validation of his passport or for the issue of a passport with a letter from the head of the firm in the interests of which he intends to go to Europe. Such letter must state not only the names of the European countries which the applicant expects to visit and the objects of his visits thereto, but in addition, whether or not the applicant is a salaried employee of the firm concerned; and if so, how long he has been known to the

firm and for what period of time he has been in its employ. If the applicant is going to Europe on a commission and not a salary basis, that fact also should be specifically stated. If the applicant for a passport is himself the head of the concern for which he is going to Europe, he must submit a letter from another officer of the concern or a letter from the head of some other reputable concern who has had business transactions with the applicant and has knowledge of the business in which the applicant is engaged and the object and necessity of his proposed trip to Europe.

An applicant who is going to Europe for any purpose other than commercial business must satisfy the Department of State that it is imperative that he go, and he must submit satisfactory documentary evidence substantiating his statement concerning the imperativeness of his proposed trip.

In view of the exigencies of the present situation and the consequent necessity of exercising the greatest care in the validation of passports or the issue of new passports, the Department of State will be obliged to hold applicants and firms responsible for any false or misleading statements made by them in connection with applications for passports, and any such false or misleading statements would be in violation of Section 220 of Title 22 of the U. S. Code, which reads as follows:

> "Whoever shall willfully and knowingly make any false statement in an application for passport with intent to induce or secure the issuance of a passport under the authority of the United States, either for his own use or the use of another, contrary to the laws regulating the issuance of passports or the rules prescribed pursuant to such laws, or whoever shall willfully and knowingly use or attempt to use, or furnish to another for use, any passport the issue of which was secured in any way by reason of any false statement, shall be fined not more than $2,000 or imprisoned not more than five years or both."

Women and children will not be included in pas[s]po[rt] issued to their husbands or fathers unless the urgent a[nd] imperative necessity of accompanying them is conclusive[ly] established.

Passports will not, as a rule, be validated or issued f[or] travel in opposing belligerent countries.

Should a person now having a valid passport proce[ed] to any European country without first having submitt[ed] his passport to the Department of State for validation, t[he] protection of the United States may be withheld from h[im] while he is abroad.

Should a person to whom a passport has been issu[ed] use it in violation of the conditions or restrictions co[n]tained therein, the protection of the United States m[ay] likewise be withheld from him while he is abroad and [he] will be liable for prosecution under the provisions of S[ec]tion 221 of Title 22 of the U. S. Code, which reads in pa[rt] as follows:

> "* * * whoever shall willfully and knowingly use [or] attempt to use any passport in violation of the con[di]tions or restrictions therein contained, or of the ru[les] prescribed pursuant to the laws regulating the iss[u]ance of passports, which said rules shall be print[ed] on the passport; * * * shall be fined not more th[an] $2,000 or imprisoned not more than five years, [or] both."

Hereafter when a passport is validated for or issued f[or] use in Europe, its validity shall be restricted to the peri[od] necessary to accomplish the purpose of the intended vi[sit] to Europe but in no case beyond a period of six month[s].

Passports in possession of persons now residing abro[ad] shall in due course be submitted to American consul[ar] officers for appropriate endorsement under special instru[c]tions to be sent to such officers at a later date.

CORDELL HULL

Department of State,
September 4, 1939.

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